

Privacy: the New Management Imperative

FFIEC Risk Management Seminar

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The Westin St. Francis Hotel

San Francisco, CA

Privacy After September 11?



Our Only Choices?

STAHLER
OF THE CONGRESSIONAL PRESS
1998



How We Got Here

"US Bancorp and its family of financial service providers understands that confidentiality is important to you and essential in our business. It is our policy that all personal information you supply to us will be considered confidential. This policy holds true no matter how we receive your personal information; over the phone, at our branches, through our ATMs or on-line at this Web site." www.usbank.com/privacy (May 25, 1999).

How We Got Here

- US Bank and US Bancorp were guaranteed a minimum payment of \$4,025,000 by MemberWorks for providing confidential bank customer information
- In return for providing personal, confidential customer information, MemberWorks also paid Defendants commissions equal to 22% of net membership revenue from sales to Defendants' customers.

Mike Hatch, Attorney General for the State of Minnesota v US Bank National Association et al ,
Complaint Paragraphs 17 and 18.

How We Got Here

- Cardholder name
- Cardholder address
- Cardholder phone number
- Cardholder account number (scrambled)
- Last date of purchase information
- Account open date
- Account balance

Mike Hatch, Attorney General for the State of Minnesota v US Bank National Association et al.
Complaint Paragraph 16.

How We Got Here

- Credit limit
- Credit insurance status
- Social security number
- Year-to-date finance charge
- ATD transaction count
- Credit card type (classic or gold)

Mike Hatch, Attorney General for the State of
Minnesota v US Bank National Association et al.
Complaint Paragraph 16.

How We Got Here

- Brand (US Bank, Express line Rocky MT)
- Number of credit cards
- Date of birth
- Cash advance amount
- Behavior score
- Bankruptcy score
- Date of last payment

Mike Hatch, Attorney General for the State of Minnesota v. US Bank National Association et al., Complaint Paragraph 16.

How We Got Here

- Amount of last payment
- Date of last statement
- Statement balance

Mike Hatch, Attorney General for the State of
Minnesota v US Bank National Association et al.,
Complaint Paragraph 16.

In re Chase Manhattan Bank, N.A.

- Provided lists of its 20,000,000 customers
- Names
- Addresses
- Phone numbers
- Encrypted account numbers
- Mortgage loan numbers

Attorney General of New York Bureau of Consumer
Frauds and Protection, In re Chase Manhattan,
Assurance of Discontinuance, Para. 4

In re Chase Manhattan Bank, N.A.

- Credit card usage
- Credit line
- Credit balance
- Last transaction

Attorney General of New York Bureau of Consumer
Frauds and Protection, In re Chase Manhattan,
Assurance of Discontinuance, Para. 4

GLB Privacy Requirements

- Create a notice that ***accurately*** reflects your privacy policies and practices.
- Provide that notice to each customer at least annually
- Do not share ***nonpublic information of a*** customer/consumer with a nonaffiliated third party unless that person is given the opportunity to opt-out.
- Do not disclose account numbers or access codes to nonaffiliated third parties for marketing purposes.

GLB Definitions

"Consumer" includes any individual who obtains or has obtained from your institution a financial product/service that is to be primarily used for personal, family or household purposes.

Disclosure of Non-Public Personal Information

A financial institution is prohibited from disclosing nonpublic personal information to a nonaffiliated third party unless the institution has:

- Disclosed to the consumer, in a clear and conspicuous manner, that the information may be disclosed to such third party
- Given the consumer an opportunity to opt-out; and
- Described the manner in which the consumer can exercise the opt-out.

Transfers of Information

If the transfer is for the performance of services on behalf of the financial institution:

- Disclose that the information is going to be provided.
- Obtain a contractual commitment from the third party to maintain the confidentiality of the information.
- GLB prohibits a nonaffiliated third party that has received NPI from disclosing the information to others unless the disclosure would have been lawful if made by the financial institution.

Transfers of Information

Financial institutions are prohibited from disclosing an account number or similar form of access number or access code for a credit card account, deposit account, or transactions of a consumer to any nonaffiliated third party for use in

- Telemarketing;
- direct mail marketing; or
- other marketing through electronic mail to the consumer.

GLB Definitions

"Customer" is a consumer who has a continuing relationship with your institution through which you provide one or more financial products or services. *All customers are consumers for purpose of this law.*

Privacy Facets

- Data Flows.
- Fair Information Practices versus Privacy.

Fair Information Practices

- Notice
- Choice
- Access
- Security
- Onward Transfer
- Reasonableness
- Dispute Resolution

Data Flows

- **Business Needs**
- **Entry Points**
- **Access Points**
- **Storage**
- **Compilation and Use**
- **Exchange and Transfer**

Privacy: A Business Issue

- Golden Rules of Privacy:
- "Do unto the data of others as you would have them do unto your data."
- "Say what you do and do what you say."

Managing Privacy: Issues

- Bank's largest supplier asks to have access to select information on specific customers.
- The FBI asks to have immediate access to bank's CRM database.
- Bank begins sharing information with affiliated companies to enhance employee security.

Managing Privacy: Issues

- Bank's Website privacy policy (P3P Compact Policy) does not conform to it's written policy.
- IE6 warns customers that cookies on Bank's Website violate their privacy settings.
- Bank want to limit the size of a class action lawsuit.

Managing Privacy: Issues

- Bank's Webmaster wants to change functionality of bank's Website.
- Affiliated entities ~~each manage their own~~ domains but are linked to bank's home page.
- Bank engage a third party to conduct direct marketing campaign.

Examinations:

- 6 Modules – depends upon how bank uses personally identifiable information.
- Discussion of FFIEC approach.
- “Plumbing Approach”.

Technology: the Solution?

- CRM
- Enterprise solutions
- Off-line and on-line
- P3P and Microsoft
- NAAG

Technology: Solution or Problem?

- Internet Explorer 6.0 and compact privacy statements
- Privacy warnings
 - Example: AT&T
- Cookies and "Web bugs"
- Class action litigation

What's Next?

- How September 11 changed the landscape.
- New sensitivities and new liabilities.
- New expectations.
- Sensitized juries and politicians.
- Increased needs and more plaintiffs lawyers?

“They that give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.”

Benjamin Franklin

Historical Review of Pennsylvania

"We don't want to create a society we hate in order to save one that we love."

Larry Irving

Privacy Council

Speech, October 9, 2001

PRIVACY COUNCIL

the national council on

privacy and information